

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,
Plaintiff-Respondent,

v.

JESUS RODRIGUEZ-FLORES,
Defendant-Movant.

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Cr. No. C-08-51 (1)

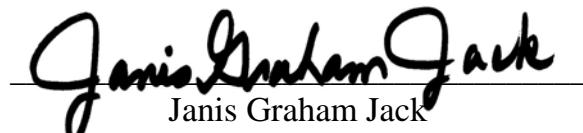
**ORDER DENYING “OBJECTION” AND
DIRECTING CLERK TO DOCKET AS A NOTICE OF APPEAL**

On December 3, 2008, the Clerk received from Defendant Jesus Rodriguez-Flores a motion titled as a “Motion to Correct Final Sentence Pursuant to 18 § 3742.” (D.E. 25.) In an order entered December 5, 2008, the Court construed the motion as a motion to reduce sentence pursuant to 28 U.S.C. § 3582 and denied it. (D.E. 26.) On December 15, 2008, the Clerk received from Rodriguez-Flores a motion titled as an “Objection to Order Denying Properly Filed § 3742 Motion.” (D.E. 27.) In it, he argues that the Court erred in construing his motion as a § 3582 motion. He contends that his previous motion was a “properly filed § 3742 motion” and that the Court should have instead followed the procedures set forth in Section 3742(d), which involve certifying the appellate record to the court of appeals.

Other than citing to 18 U.S.C. § 3742, Rodriguez-Flores’ prior *pro se* motion did not evidence an intent to appeal. In any event, it was filed approximately seven months beyond the deadline for appealing his final criminal judgment, which was entered May 5, 2008. (D.E. 23.) As a notice of appeal, therefore, it is untimely and would not confer jurisdiction on the appellate court. Significantly, moreover, the motion sought relief in the form of a modification of Rodriguez-Flores’ sentence. Thus, this Court did not err in construing his motion as a § 3582 motion.

The instant “Objection” filed by Rodriguez-Flores, however, seeks review and modification of this Court’s December 5, 2008 order. To the extent he is seeking reconsideration of that order, his motion is denied for the reasons set forth in the preceding paragraph. Because his “Objection” was filed within the ten-day window for appealing the Court’s prior order and because it seeks review of that order, however, the Clerk is directed to docket Rodriguez-Flores’ December 15, 2008 as a Notice of Appeal.

It is so ORDERED this 18th day of December, 2008.



Janis Graham Jack
United States District Judge